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BILL ANALYSIS

BILL NUMBER: House Bill 4627 (as introduced)
TOPIC: Suitability Standards for the Sale of Annuity Products
SPONSOR: Rep. Bob Constan
CO-SPONSORS: Rep. Polidori, Clemente, and Kandrevas
COMMITTEE: Committee on Senior Health, Security, and Retirement
Analysis Done: March 23, 2010

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

Between January 1, 2007 and December 31, 2009, OFIR received 435 consumer complaints involving annuities with 348 (or 80%) based on the marketing and sales of annuity products. These figures emphasize the need for suitability standards and enhanced disclosures of the technical aspects of the product during the marketing and sale of these complex financial instruments.

DESCRIPTION OF BILL

House Bill 4627 amends sections 4151, 4153, and 4155 of chapter 41A of the Michigan Insurance Code; adds new sections 4156, 4158, and 4159; and repeals section 4165. The legislation requires an insurer or producer, as applicable, to apply suitability standards prior to and during the sale of annuity contracts. Section 4155(2) requires an insurer to make reasonable efforts to obtain information about the consumer's goals, needs, and ability to pay for the annuity without liquidating assets.

Section 4156 is added to require insurance producers or insurers to provide the prospective annuity purchaser a copy of a consumer buyer's guide and a disclosure document which must include:

- The generic name of the contract, the specific company product name and form number and the fact that the product is an annuity.
- The insurer's name and address.
- A description of the contract and its benefits.

- The guaranteed, nonguaranteed, and determinable elements of the contract, the limitations of each and an explanation of how they operate.
- The specific dollar amount or percentage charges and fees and how they apply.
- Information about the current guaranteed rate for new contracts that contains a clear notice indicating that the rate is subject to change.

Section 4158 is added to require the Commissioner to annually publish a consumer guide on annuities.

Section 4159 is added, giving consumers the right to cancel an annuity contract for any reason within 30 days after its delivery. Consumers must receive notice of this right to cancel when the policy is delivered.

This legislation also repeals section 4165, which provides that insurers or insurance producers compliance with the National Association of Securities Dealers rules "NASD Manual, Conduct Rules section 2310 (CCH, 1966)" or rules at least as stringent as section 2310 pertaining to suitability satisfies Chapter 41A's requirement for the recommendation of variable annuities.

SUMMARY OF ARGUMENTS

Pro

It is necessary to mandate that consumer protections be used during the sale of an annuity contract. House Bill 4627 provides criteria for the prospective insured and the insurer or insurance producer to determine which, if any, of the available annuity products are suitable for the insured's needs.

The consumer protections in this bill have much wider application than similar legislation passed in other states in that the protections afforded are not merely limited to the senior citizen population.

Extending the right to cancel the annuity contract from 10 days to 30 days is a valuable consumer protection. Having the consumer sign a form acknowledging receipt of the right to cancel notice will provide protection for the consumer and the producer involved in the annuity sale. In addition to the signed notice of the right to cancel, OFIR would like to see a requirement for a signed proof that the policy was received since consumers often complain that the contract was never received.

Con

While this legislation requires the Commissioner to annually prepare and publish a consumer guide on annuities, the National Association of Insurance Commissioners (NAIC) currently publishes such a guide. OFIR recommends section 4158 be amended to require OFIR to provide, but not to create, a consumer guide on annuities.

The NAIC adopted model legislation pertaining to suitability in annuity transactions in 2003 that specifically addressed the sale of annuities to seniors. Michigan adopted the model legislation in 2006 and made it applicable to the sale of annuities not just to seniors, but to all Michigan residents. The NAIC's Life Insurance and Annuities Committee is now considering changes to the Suitability in Annuity Transactions Model Regulation. If the NAIC adopts changes to this model regulation, member states are required to work toward implementation in their respective states. This legislation could potentially conflict the NAIC Model Regulation.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in this bill:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: Developing, printing, and distributing the consumer buyer's guide will have a budgetary impact on the agency. The costs are unknown at this time.

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None Known

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None Known

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None Known

Comments:

OTHER STATE DEPARTMENTS

None

ANY OTHER PERTINENT INFORMATION

Similar legislation was introduced in House Bill 6523 during the 2007-2008 legislative session.

This legislation, with slight changes, would provide critical consumer protections in connection with the sale of fixed annuity products. OFIR suggests that Administrative Rules be promulgated for variable annuities, similar to those promulgated for variable life contracts in Administrative Rules 500.841 – 500.866.

Section 500.4073 currently requires insurers to provide consumers with a 10 day right to cancel and will have to be amended to be consistent with the 30 day requirement proposed in section 4159.



Ken Ross
Commissioner

March 24, 2010

Date